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No. 04-1704

FILED
DEC 5 - 2005
OFFICE OF THE CLERK
SUPREME COURT, U.S.

IN THE

Supreme Court of the United States

DAIMLERCHRYSLER CORPORATION,
Petitioner,

v.

CHARLOTTE CUNO, *et al.*,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

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BRIEF OF THE INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA, UAW AND THE DETROIT BRANCH OF THE NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE AS *AMICUS CURIAE*, IN SUPPORT OF PETITIONER DAIMLERCHRYSLER CORPORATION

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This brief *amicus curiae*[1] is filed by the International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, UAW (UAW), an international

[1] No counsel for a party authored this brief *amicus curiae* in whole or in part, and no person or entity, other than the *amicus curiae*, has made a monetary contribution to the preparation or submission of this brief.

labor union, headquartered in Detroit, Michigan, consisting of nearly 1,000 local unions representing approximately 1.3 million active and retired members and their families and the Detroit Branch of the National Association For The Advancement of Colored People (NAACP). The parties to the case have consented to the filing of this brief *amicus curiae.*

The UAW represents members employed both within and outside of the automotive industry. Those members are employed in states throughout the nation that utilize tax incentives like the one at issue in this case, including Ohio. In fact, the plant at the center of this controversy, DaimlerChrysler's Jeep Assembly Plant in Toledo, Ohio employs 3,628 active UAW members.

The Detroit Branch of the NAACP is the Detroit chapter of the nation's oldest civil rights organization. It received its charter from the national organization in 1912 and has remained the largest branch of the NAACP since its inception. The Detroit Branch has a lengthy history of participation in groundbreaking civil rights litigation. It also is dedicated to the promotion of investment in minority and inner-city communities. Because tax credits, like the one at issue in this case, are one of the most important tools used to encourage business development and employment in distressed areas, the Detroit Branch has a significant interest in the outcome of this case.

SUMMARY OF ARGUMENT

In the decision at issue in this case, the Sixth Circuit Court of Appeals found that Ohio's investment tax credit, which is utilized to attract business and jobs to the state, violates the Commerce Clause of the United States Constitution by discriminating against interstate commerce. By prohibiting Ohio's use of its investment tax credit, the Court of Appeals' apparently intended to level the playing field amongst states

competing for new businesses and jobs by making sure that a state does not employ incentives that discriminate against interstate commerce. We submit that the Court of Appeals' decision does not achieve this goal and may indeed work directly against it. As a result, we would also submit that the Court of Appeals' decision in this regard should be reversed.

ARGUMENT

It is the plain reality of today's economy that states routinely compete with each other to entice corporations to invest in their states. In fact, states have no choice but to offer such incentives because "every other serious contender state and community will give them, and more importantly, the companies have come to expect them." KIM HILL & EMILIO BRAHMST, CENTER FOR AUTOMOTIVE RESEARCH, THE AUTO INDUSTRY MOVING SOUTH: AN EXAMINATION OF TRENDS (2003) at *http://www.cargroup.org/pdfs/North-South Paper.PDF* at 12. This is certainly true in the automotive industry where states employ various tools in their efforts to persuade businesses to invest. The list of incentives offered by states to entice businesses to invest locally includes tax abatements, job creation tax credits, site preparation assistance, subsidized land purchases, employee recruitment and training subsidization, and on and off-site infrastructure improvements. *Id.* at 11.

States do not use the available tools identically in their efforts to convince businesses to invest locally. Indeed, some of those tools are more available in one state than another. A state with good infrastructure and a skilled workforce but higher operating costs, such as wages or taxes, must rely more heavily on tax incentives to persuade businesses to invest there. A state that has less infrastructure and a less skilled workforce, but lower operating costs, may employ investments in infrastructure and training to convince an employer to invest, while not needing to rely to the same

extent on tax incentives to create a package that is attractive to an employer.[2]

Historically, the various states' economies have developed differently and to a certain extent those differences are regionally related. In pointing out this distinction our aim is not to pit one region against another but rather to make clear that the states enter the competition for new jobs from varied positions. As a result, the Court of Appeals' decision, which simply does not take this factor into account, creates a situation in which the playing field has not been leveled but rather has been tilted—even if unintentionally—in favor of some states.

What the Court of Appeals' decision has done is to take a tool away from the state of Ohio—namely its ability to utilize tax credits as incentives to encourage local investment—while leaving intact the various other tools that may be utilized by the states. Because the states find themselves in different positions in terms of what they may offer to encourage a business to invest locally, the inevitable result of the Court of Appeals' decision is to place a state like Ohio, that relies more heavily on tax incentives, at a disadvantage compared with a state that may employ other incentives like infrastructure improvements and investments in training, incentives that are not affected by the Court of Appeals' decision.

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[2] In a comparison of incentive packages offered by northern and southern states, the northern states' incentive packages were made up of 83 percent tax abatements and 13 percent infrastructure improvements. The southern states used packages made up of only 38 percent tax abatements, while 44 percent of the incentives were provided through improvements to infrastructure and 18 percent through employee training, screening and recruitment. In raw numbers, this means that southern states are contributing $52 million more on infrastructure improvements than northern states and $23.2 million more for employee recruitment and training. *Id.* at 11.

The scenario created by the Court of Appeals' decision leaves Ohio and any other similarly situated state in a troubling position. That is, in response, Ohio is faced with at least two equally problematic options. In order to remain competitive with other states, it might decide that it has to lower dramatically or abolish altogether its franchise tax, a result that would be a greater drain on state revenues than the incentives that are challenged in this case by the Respondents. Another option available to the state is to offer a package to DaimlerChrysler or another corporation that does not include the prohibited tax incentives. However, because of the unique economic circumstances of Ohio, that package is likely to fall far short of packages offered by other states because Ohio will not be able to make up for the lack of tax incentives with other permitted incentives. As a result, the business in question is likely to choose another state, the state that has offered it a more appealing package of incentives. What Ohio loses in this transaction, based on its inability to compete fairly, is striking.

The state has not just lost thousands of new jobs created by a facility like the Jeep Assembly Plant. It has lost thousands of highly paid jobs that offer pensions and healthcare. The average wage of an auto assembly worker is $69,500 annually. HILL & BRAHMST at 11. Moreover, because these jobs are highly paid, their impact on the state's economy is even more dramatic. In fact, for every auto assembly job created, 6.5 more jobs are created in the economy. *Id.* These numbers are more than mere statistics, they are tremendously important to a state like Ohio that lost 244,000 jobs (191,000 in manufacturing) in the period between November 1999 and November 2003 (JON HONECK, POLICY MATTERS OHIO, INTERNATIONAL TRADE AND JOB LOSS IN OHIO (2004) at *http://www.policymattersohio.org/trade.htm.*) and that has an unemployment rate of 6.1%. BUREAU OF LABOR STATISTICS, REGIONAL AND STATE EMPLOYMENT AND UNEMPLOYMENT (May 2005) at *http://www.bls.gov/news.release/pdf/laus.pdf*

If the evil intended to be addressed by the Court of Appeals' decision is discrimination against interstate commerce, then it seems particularly troubling that the result of its decision would be to place one state, such as Ohio, at such a disadvantage in its ability to compete for the kinds of good jobs created by new facilities like DaimlerChrysler's Jeep Assembly Plant.

It also bears note that the Respondents' challenge to the incentives at issue appears to be based on the assumption that such incentives cost the states more than they contribute. However, the evidence is to the contrary. The Center for Automotive Research (CAR) in Ann Arbor, Michigan indicates "that an incentive package paid to encourage an automaker to invest in a community is quickly recovered through tax revenues generated by jobs created, along with additional indirect or spinoff employment effects." HILL & BRAHMST at 12. The CAR's research offers the example of a facility built in Flat Rock, Michigan by Ford Motor Company. While the state of Michigan and the City of Flat Rock offered $125 million in tax breaks to Ford, the state estimated that as a result of the investment, it would reap $850 million in taxes from the 1,945 workers employed in the facility as well as from the additional employees hired by the plant during the life of the agreement and by the 6,300 indirect jobs created by the money spent in the state's economy by the company and its employees. *Id.*

But our purpose here is not to debate the merits of tax incentives offered to investing businesses by the various states. Rather, our purpose is to highlight the very real consequence of the Court of Appeals' decision. That consequence is to create a situation in which some states are handicapped in their ability to compete for new business investment and jobs while other states remain relatively unimpacted in their ability to entice local investment. The UAW and the Detroit Branch of the NAACP respectfully submit that this could not have

been the intended consequence of the Court of Appeals' decision, a decision purportedly aimed at eliminating discrimination against interstate commerce.

CONCLUSION

For the foregoing reasons, the decision of the Court of Appeals with respect to Ohio's investment tax credit should be reversed in relevant part.

Respectfully submitted,

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